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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/083,973	02/27/2002	David D. Kiefer	210_271	6900

20874 7590 12/13/2004

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EXAMINER	
BECKER, DREW E	

ART UNIT	PAPER NUMBER
1761	

DATE MAILED: 12/13/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/083,973	KIEFER ET AL.	
	Examiner	Art Unit	
	Drew E Becker	1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *08 November 2004*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-15* is/are pending in the application.

4a) Of the above claim(s) *1-8* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *9-15* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

1. This application contains claims 1-8 are drawn to an invention nonelected with traverse. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

Terminal Disclaimer

2. The terminal disclaimer filed on November 8, 2004, disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of Pat. No. 6,763,677 and Pat. No. 6,457,402 has been reviewed and is accepted. The terminal disclaimer has been recorded.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. Claims 9-12 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Badalament et al [Pat. No. 6,012,384] in view of Briscoe Jr et al [Pat. No. 6,390,378] and Cantagallo et al [Pat. No. 3,733,849].

Badalament et al teach a mobile container device comprising a pair of plenum chambers extending rearwardly from a mixing chamber (Figure 4, #34 & 40), stacked

rows of cartons (Figure 4, #24), vertically stacked fan means (Figure 4, #60), a gas generator (Figure 2, #116), rear doors which could exchange fresh air (column 6, line 45), a return air inlet (Figure 7, #56), and pressure bars (Figure 4, #70). Badalament et al do not recite a control means for automatically activating a fresh air exchanger unit, gas generator, and fans. Cantagallo et al teach a mobile container device comprising a fresh air exchanger unit (column 12, line 3 to column 13, line 16). Briscoe Jr et al teach a mobile container device comprising a control means for automatically activating a fresh air exchanger, gas generator, and fans (Figure 2, #5; column 8, lines 12-63). It would have been obvious to one of ordinary skill in the art to incorporate the fresh air exchanger of Cantagallo et al into the invention of Badalament et al since both are directed to mobile container devices, since Badalament et al already included doors which could exchange fresh air (column 6, line 45), and since the fresh air exchanger of Cantagallo et al can be used without having to manually open the rear doors of Badalament et al, for instance during transport. It would have been obvious to one of ordinary skill in the art to incorporate the controller of Briscoe Jr et al into the invention of Badalament et al, in view of Cantagallo et al, since all are directed to mobile container devices, since Badalament et al already included fans, a gas generator, and rear doors which could exchange fresh air (Figures 2-4, #60, 116; column 6, line 45), since Cantagallo et al already included a fresh air exchanger unit (column 12, line 3 to column 13, line 16), and since the control means of Briscoe Jr et al would have provided improved automatic control of these elements, for instance during transport. Phrases

such as "to activate the fans in a given order" are merely preferred methods of using the claimed apparatus.

5. Claims 13-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Badalament et al, in view of Briscoe Jr et al and Cantagallo et al, as applied above, and further in view of Hearne Jr [Pat. No. 6,202,434].

Badalament et al, Cantagallo et al, and Briscoe Jr et al teach the above mentioned components. Briscoe Jr et al also teach control of automatic drain valves (column 7, line 65; column 8, line 46). Badalament et al, Cantagallo et al, and Briscoe Jr et al do not teach drains in the floor. Hearnes Jr teaches a mobile container device comprising drains in the floor (Figure 1, #114). It would have been obvious to one of ordinary skill in the art to incorporate the floor drains of Hearne Jr into the invention of Badalament et al, in view of Briscoe Jr et al and Cantagallo et al, since all are directed to mobile container devices, since Badalament et al already included the dripping of water onto the floor (column 8, lines 8-19), and since the floor drains and open reservoir of Hearne Jr (Figure 1, #114 & 117) would have provided a convenient means of containing this water while also preventing the floor and boxes from becoming wet.

Response to Arguments

6. Applicant's arguments filed November 8, 2004 have been fully considered but they are not persuasive.

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections

are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

The test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Conclusion

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Drew E Becker whose telephone number is 571-272-1396. The examiner can normally be reached on Mon.-Thur. 8am-6pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Drew Becker
DREW BECKER
PRIMARY EXAMINER
12-8-04